COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.12.2002
COM(2002) 705 final

REPORT FROM THE COMMISSION

ON EUROPEAN GOVERNANCE

REPORT

ON EUROPEAN GOVERNANCE

TABLE OF CONTENTS

1.   INTRODUCTION

When presenting the programme of the current Commission to the European Parliament in February 2000, President Romano Prodi identified *the promotion of new forms of governance* as one of the four strategic objectives of this Commission's period of office[1].

On 25 July 2001 the European Commission adopted a *White Paper on European governance* which has been made available to the public on the Internet[2] and has also been widely distributed as a brochure. It has been the subject of debates, seminars, articles and studies.

A public consultation was formally launched, running up until 31 March 2002 allowing members of the public to submit their comments. In its White Paper the Commission announced that, before the end of 2002, it would report on progress achieved with regard to governance initiatives and draw the lessons from the public consultation. The Commission considered that this would establish the basis for further co-operation between the institutions on reforming European governance under the existing treaties. However, the Commission also pointed out that it was intending to play an active part in the work of the Convention on the future of the Union and of the next Intergovernmental Conference (IGC), both of which had been given the task of devising a new Treaty. With this aim in mind the Commission will be drawing inspiration from its experience with the implementation of the White Paper.

Promoting new forms of governance is by no means the sole responsibility of the European institutions, and even less so that of the Commission alone. It is the responsibility of all levels of public authority, private undertakings and organised civil society because good governance – openness, participation, accountability, effectiveness and coherence – are what the public expects at the beginning of the 21st century. The White Paper can thus not cover every aspect. Another limitation is the decision taken by the Commission in 2001 to bring forward only those proposals that could be applied within the existing institutional framework, in other words *under the treaties as they stand*. This choice became the only option available from the moment when, following the decision of the Nice European Council in December 2000, it fell to a new IGC that was involve to as many players as possible, to come up with a new framework for the institutions in 2004.

However, the distinction between the existing institutional framework and a future, revised institutional framework cannot be too rigidly interpreted when it comes to the public comments on European governance. Many people who responded to the White Paper also set out their ideas on a future Treaty.

The Commission is presenting separate contributions on the reform of the treaties to the Convention and these contributions also draw on the contents and processes launched by the White Paper. A necessary link to the work of the Convention and the IGC is thus established.

---

[1]   Communication from the Commission to the European Parliament, the Council, the Social and Economic Committee and the Committee of the Regions on Strategic Objectives 2000 – 2005, February 2000 - COM(2001) 154

[2]   http://europa.eu.int/comm/governance/ index_en.htm

2. LESSONS TO BE DRAWN FROM REACTIONS TO THE WHITE PAPER

2.1. The public consultation

The public consultation on the Governance White Paper ran over an eight-month period, from 25 July 2001 to 31 March 2002. Information on the conduct of the public consultation and the key messages received is reported in the annex.[3]

The *response* to the Commission's public consultation on the White Paper has been modest in numbers (260 contributions) but rich in content. The *reception* of the White Paper has been multi-facetted and has provided real added value to the Commission's subsequent policy development work. It has also challenged the Commission to take account of the positions of the various players in the further development of European governance, including delaying or abandoning actions which do not generate sufficient support.

The public response has largely supported the White Paper's definition of the principles underlying European governance of *openness, participation, accountability, effectiveness and coherence*, while principles such as democratic legitimacy and subsidiarity have been proposed as additions.

It is worth noting that some EU institutions and several Member States did not contribute with responses to the public consultation. Similarly, a geographical imbalance across the EU was in evidence as regards contributions, reflecting differences in public consultation culture and tradition. Moreover, the contributions received revealed a significant measure of diversity in how European governance is perceived. In other words the issues and approaches proposed in the White Paper were addressed according to the *prism* through which respondents understand the subject matter of European governance – *inter alia* democratic legitimacy concerns, constitutional or institutional aspects, efficiency criteria, and even considerations relating to political expediency

2.2. Main lessons of the public consultation

While endorsement has not been unmitigated, the Commission welcomes the fact that the public consultation has supported the following key governance approaches:

– **Improving bottom-up involvement in EU policy shaping and implementation**

The White Paper proposals on 'better involvement' and on consulting civil society drew, by far, more interest than any other theme. A broad range of respondents commend the White Paper in addressing the issue of low citizen participation and involvement within the EU and confirm a fundamental willingness to engage in consultation and participation in shaping EU policy.

---

[3]   Full details of the results of the public consultation, including a more detailed analysis of the correlation between respondents and subject matter addressed/orientations proposed, are available on the European Commission's governance website: http://europa.eu.int/comm/governance/index_en.htm

The response confirms that more openness and better consultation are in both the immediate and the long-term interest of the EU, not only for providing better policies but also for more efficient implementation. Efficient transparency requires a pro-active approach and cannot be limited to access to documents. Involvement in policy-shaping should include national and sub-national authorities as well as a broad range of non-governmental interested third parties. The public response also confirms the need to review the role of the Committee of the Regions and the Economic and Social Committee in terms of earlier involvement in Commission deliberations, better representation of sub-national authorities and civil society, and a broader pro-active dialogue with constituencies beyond specific consultations.

– **Widening the choice of instruments to respond to new governance challenges**

The Commission is supported in its belief that there is a need for a wider choice and more flexible policy tools within, and in addition to, traditional legislation. The instruments available to the Community should be more conducive to better implementation. A better policy and regulatory framework thus establishes the conditions under which legislative, as well as alternative approaches such as co-regulation or the open method of co-ordination can be most appropriately and most effectively used.

The choice of instruments should also build on a stronger factual base with ex-ante impact assessments incorporating the evaluation of economic, environmental and social consequences, a structured approach to the collection and use of expertise, as well as consultation of the public and stakeholders, all subject to transparency to allow public scrutiny.

– **More focused European institutions with clearer responsibilities**

The Commission considers that the public consultation supports the need for a clearer, more transparent and more accountable division of competencies between the EU institutions, as argued by the Commission in the White Paper and in the Convention. This calls for a clearer distinction between legislative and executive functions, and for clarification and confirmation of the Commission's executive functions vis-à-vis Member States.

The Commission is presenting proposals to this end to the Convention with a view to adapting the Treaty. In addition, while awaiting possible future Treaty changes, the Commission is proposing measures to pursue these objectives, exploiting existing possibilities within the current Treaty. In particular, the Commission is proposing amendments to the general system of committees of Member State representatives, that assist the Commission in the execution of its implementing powers (so-called "comitology"), and a framework for establishing regulatory agencies at Community level.

Moreover, in line with the Commission's core function of ensuring application and enforcement of Community legislation, a new and more efficient approach to handling suspected breaches of Community law is envisaged.

2.3. Towards a common understanding of European Governance

Part of the public response regrets perceived limits to the White Paper's understanding of "governance" which focuses predominantly on the effectiveness and efficiency of the EU decision-making system, while disregarding issues of democratic legitimacy and democratic deficit in European integration that are seen to be more important.

The Commission has stressed that the European governance agenda should not be limited to the White Paper or the issues raised therein. The White Paper was intended to be a contribution to drive forward the development of European governance by focusing on selected issues under certain assumptions. In particular, the White Paper assumed a stable institutional and Treaty framework with a reinvigorated Community method at its core. Thus, the governance potential of Treaty changes was generally reserved for the separate Convention process now underway in the lead-up to the 2004 inter-governmental conference. Moreover, when addressing the Commission's own role in European governance, the White Paper focused on improving the Commission's role as policy initiator and executive, and less on its role as a European civil service and public administration (subject of the on-going Commission reform programme). Such limiting assumptions made in the White Paper may have led to un-intended perceptions of a narrow governance agenda, contrary to the Commission's desire to retain a broad perspective on European governance.

3. IMPLEMENTING THE WHITE PAPER

The White Paper on European governance set out key proposals for changes in four broad, action areas: "better involvement", "better policies, regulation and delivery", "the EU's contribution to global governance" and "refocused policies and institutions".

3.1. Better involvement

The White Paper's proposals on improving the involvement of non-institutional players in policy-shaping and – to a certain extent – policy implementation, were clearly at the heart of a governance reform aimed at bringing the European Union closer to its citizens. Reflective of the Commission's awareness of being perceived as too "distant" from its citizens, but above all reflective of a genuine commitment to enrich its policy deliberation, the Commission's White Paper envisaged bottom-up involvement through a number of processes and players.

3.1.1. *First line of action: information and communication/making the way the Union works more open*

1. The White Paper made the case for improving information, creating more openness and ensuring more pro-active communication between European public-sector actors (institutions, Member States etc.) and Europe's citizens. With respect to communication, the Commission also remains committed to a multi-linguistic environment. The White Paper suggested that the European institutions should continue to develop EUR-Lex in 2002 as a single on-line point for all languages where people can follow policy proposals through the decision-making process. *The European Parliament and the Council* should make information available more rapidly about all stages of the co-decision process, particularly as regards the final, "conciliation phase". Lastly, the White Paper called on the Member States to promote public debate on European affairs.

2. As announced in the White Paper, the Commission Communication on a new framework for co-operation on the **information and communication policy of the European Union**[4] demonstrates the institution's desire to provide the general public more actively with information on European affairs, all the time working jointly with other partner institutions. The Council and the Parliament have welcomed this initiative. The Commission adopted a second communication relating to the content of, and approach for action entitled "**An Information and Communication Strategy** for the European Union"[5], which sets out a new, two-prong approach:

  – giving the European Union the capacity to formulate and disseminate *messages geared to and focused* on its priority issues. This capacity will need to be developed in an overall and coherent way and be based on clear objectives that the institutions have set themselves;

  – establishing a voluntary working partnership with the Member States fostering genuine synergy between their structures and know-how and the activities of the European Union.

---

[4]   COM(2001) 354
[5]   COM(2002) 350

3. The central service, **Europe Direct[6]**, that is accessible both by telephone and via the Internet, has continued to reply to a large number of requests for information of a general nature. A signpost service (**Citizens Signpost Service**)[7] which provides information related to citizens' rights and to problems encountered within the Single Market was relaunched in 2002. Users (telephoning via a freephone number or using the web) may use any of the eleven official languages of the Union and experts responsible for dealing with the queries must reply within three working days. A network catering specifically for businesses, **Solvit[8]**, came on line in July 2002 based on the Member States' co-ordination centres that since 1997 have been responsible for dealing with problems encountered by businesses in the Single Market. Networking this service should boost "peer pressure" and generate synergies to improve the quality of services and provide information about them. The sites "Dialogue with Citizens" and "Dialogue with Business"[9] provide an access to information with regard to exercising one's rights within the Single Market and also offer a problem-solving dimension.

4. Interactive communication that is available to citizens has undergone significant development since the adoption of the White Paper in July 2001. The **Futurum**[10] website that is managed by the Commission and the **official website of the Convention** offer an opportunity for anyone to voice an opinion and contribute suggestions to the debate on the future of the Union. The **Governance** website has offered scope for dialogue before and following adoption of the White Paper. The website known as "**Your voice in Europe**"[11], as part of the Interactive Policy Making (IPM) initiative, is already offering citizens, consumers and businesses an opportunity to play an active part in the process of shaping Commission policy. Under "**Europa – second generation",**[12] interactive operations will become common practice.

5. The **openness of the institutions' work** has undergone much improvement. The Regulation of the Parliament and of the Council[13] regarding public access to European Parliament, Council and Commission documents has entered into force. The Commission has amended its rules of procedure[14]. The minutes of the Commission's meetings have been available on the Internet since January 2002. A public register of Commission documents has been available on-line since June and a citizen's guide on access to these documents under the provisions of the new regulation has been made generally available. For the application of the Regulation referred to above, the **European Parliament** has adopted a number of internal measures (amendment of its rules of procedure and of the Obligations of Officials and Servants of the European Parliament) and made available to the general public its official register in June 2002. The Council register, that is available on-line, contains references to Council documents produced from 1999 onwards. It shows which documents have been made available to the public and where such is the case their content can be displayed directly from the database or obtained by using the Council's "document access" service.

---

[6] http://europa.eu.int/europedirect/en/index_en.html
[7] http://europa.eu.int/citizensrights/signpost/front_end/signpost_en.htm
[8] http://europa.eu.int/comm/internal_market/solvit/index_en.htm
[9] http://europa.eu.int/citizens/ and http://europa/eu.int/business
[10] Site references are, respectively: http://europa.eu.int/futurum, http://european-convention.eu.int, http://europa.eu.int/comm/gouvernance, http://europa.eu.int/yourvoice
[11] http://europa.eu.int/yourvoice
[12] Communication by the President to the Commission – in agreement with Vice-President Kinnock and Commissioner Liikanen C(2001) 1753/2
[13] (EC) N° 1049/2001
[14] C(2001) 3714

The openness of the **Council's legislative work** was mentioned at the Barcelona European Council in March by a reference to a report by the Council's Secretariat-General. In June, the Seville European Council decided to make the Council's meetings more open to the public at different stages of the decision-making procedure. The list of the proposals concerned is drawn up by the Council at the beginning of every half-year and in the final phase of the procedure, the public has access to the vote and to the explanations of vote.

6. The **EUR-Lex portal on the Europa server** provides access to the Community's Official Journal, giving citizens the possibility to consult Community law in all domains. Since opening in June 2001 the portal has undergone many improvements to ease access and make it user-friendly. With effect from January 2002 all the official documents available in EUR-Lex have been available for consultation free of charge, and this applies in particular to documents published in the Official Journal regardless of their date of adoption or publication and in all formats. Access to the professional database *CELEX* continues to be fee-based however (by subscription or per session). Since April 2002 the EUR-Lex service has offered a harmonised presentation of all its pages and is accessible through EUROPA and the European Parliament's and Council's websites. The Commission's *PRELEX data base* supplies in all the languages information on the progress of the legislative procedure concerning a particular act with hyperlinks to the related texts as well as to *OEIL*, the European Parliament's legislative observatory. Citizens can in this way obtain information on the legislative process, legislative proposals adopted by the Commission, press releases, as well as the text ultimately adopted. Work is underway to also integrate the Council common positions, legislative and budgetary resolutions, European Parliament initiatives and initiatives from the Economic and Social Committee and the Committee of the Regions.

3.1.2. *Second line of action: reaching out to citizens through regional and local democracy*

1. The Commission confirmed in the White Paper that it was intending to establish at an early stage in the drafting of policies a more systematic dialogue with European and national associations of regional and local government and to set up "tri-partite, target-based contracts" as pilot projects in certain well defined areas. This as a way of simplifying legislative and implementation tasks and policies with a strong territorial impact.

The Commission has also called on the *Committee of the Regions* to play a more pro-active role in examining policy, for example through the preparation of exploratory reports in advance of Commission proposals, to organise the exchange of best practice on how local and regional authorities can be involved in the preparatory phase of European decision-making at national level. The Commission has called on the Member States to examine how the involvement of local and regional actors in EU policy-making can be improved and the use of contractual arrangements with their regions and localities can be encouraged, in full respect of Member States' constitutional systems.

2. In addition to broad consultations of the general public, the Commission, in its White Paper on European governance, also recognised the need to **strengthen relations with regional and local authorities** through their national and European associations. In this context, Commission services are preparing a working paper which aims to identify the measures that would allow a bridge with national and European associations of regional and local authorities and to determine both scope and conditions of such a dialogue.

The Commission will make its working document accessible on its website and transmit it to the main interregional and local associations with an aim of consulting all interested parties.

The European Parliament, the Committee of the Regions and the Member States will also be consulted. Following this consultation phase, the Commission would then, in the first quarter of 2003, be in a position to adopt a communication of which the implementation would be carried by all Commission departments.

3. The **Committee of the Regions** showed particular interest in the part of the White Paper dealing with regional and local democracy. The White Paper was the subject of an opinion from the Committee of the Regions in March 2002 welcoming the White Paper, with particular reference to the parts dealing with decentralisation or co-operation with regional and local authorities and in its opinion the Committee made reference to the changes to its working methods that would be needed if it was to play a more pro-active role in the examination of Community action. The committee asked to be granted investigative powers to ascertain compliance with the subsidiarity principle and to receive a mandate to monitor the impact of directives and regulations on regional and local authorities. A protocol on co-operation, reflecting the principles of governance and relating to the procedures for co-operation between the Commission and the Committee of the Regions has been signed by the two presidents concerned. This protocol aims to improve the committee's discharge of its consultative duties, stepping up its involvement in the political debate and on collaborating on information and communication policy.

3.1.3. *Third line of action: involving civil society. More effective and more open consultation in the shaping of EC policy*

1. The White Paper called for general openness and consultation of civil society actors in the shaping of EC policies. The envisaged implication and consultation of civil society is distinct from *institutional dialogue* (with the European Parliament, the Social and Economic Committee, the Committee of the Regions) and from *social dialogue* between management and labour under Article 137 to 139 EC Treaty.

Because of their representativeness, trade unions and employers' organisations have a particular role in the shaping of social policy. At the Community level, the EC Treaty requires the Commission to consult management and labour in preparing proposals in the social policy field. Under certain conditions, management and labour can reach binding agreements that are subsequently turned into Community law. This role of the social partners is well established.

2. As a result of work to improve governance, the Commission's relations with civil society have now also been formalised and made transparent. The Commission has adopted **general principles and minimum standards for consulting non-institutional interested parties**[15] on the major policy initiatives it proposes. The minimum standards will apply as from 2003. The overall idea is that by applying these standards it will be possible to know exactly who must contact whom when a new policy is being drawn up, the aim being that all parties affected by the proposal can become more involved, and on a more equal footing, in the process. The Commission will ensure that the information needed in order to respond is widely distributed via Internet access portals. The minimum standards provide *inter alia* for a period of at least eight weeks for responses, issuing confirmation of receipt, and displaying of the results of public consultation on the Internet.

---

[15]   COM(2002) 704

A consultative document was the subject of public consultation up to 31 July 2002[16] and the final set of general principles and minimum standards not only clarifies the scope of the general principles and minimum standards, they also demonstrate a clear link with the Commission's impact assessment procedures. The operational implications of the general principles and the use of selection criteria for targeted consultation have been explained in more detail. By identifying a target group the Commission should ensure that the parties concerned would have an opportunity to express their opinions. The Commission has also explained its approach not to develop legally binding consultation procedures and to respect a dividing line between its consultations and formalised decision-making procedures.

3. The idea of drawing up **more extensive partnership agreements** with a number of organised civil society sectors is still under consideration by the Commission. Given the observations it received during the consultation on the White Paper, the Commission prefers a pragmatic approach to ensure the success of implementing general standards. It should be remembered that the aim of this action was two-fold: to allow the Commission to consult the partner sectors more widely than would have been required by minimum standards and to encourage, on the basis of these agreements, civil society organisations to rationalise their internal structures, give guarantees of openness and representativeness and to confirm their ability to relay information or to conduct debates within the Member States. The European Parliament was particularly keen not to grant civil society organisations a role which, either wholly or in part, was that of those holding political responsibility and who were elected by universal suffrage. From certain quarters within civil society, concern was expressed that there would be a "de facto" establishment of a regime of privileged associations.

4. The **CONECCS** data base (Consultation, European Commission and Civil Society), a base that contains information on civil society organisations active at European level and the consultation frameworks used by the Commission to consult civil society, became fully operational in June 2002. The CONECCS Internet site[17] offers the general public information on the civil society's non-profit organisations established at European level and information on the committees and other consultative bodies the Commission uses when consulting organised civil society in a formal or structured manner. The index of organisations, which was compiled on a voluntary basis, is intended to serve only as an information source and not as an instrument for securing consent. It is a dynamic tool undergoing continuous improvement and has been welcomed as part of the organised consultative process on the minimum standards for consultation provided that it does not become a system for accrediting certain organisations vis-à-vis the Commission.

5. In addition to this general tool, there are **on-line services** that have been set up to target those sections of civil society that are more concerned by specific issues (international trade, education and culture etc). These on-line services have been put in place by the Commission's departments with responsibility for specific policies.

6. The **European Economic and Social Committee** has warmly welcomed the White Paper. In its opinion on the White Paper of March 2002 the Committee pointed out the existence of a strong link between this text and the Convention on the future of the Union. The Committee noted the need to ensure that horizontal and vertical subsidiarity was respected and to define criteria establishing the representativeness of civil society organisations. The Committee

---

[16]   COM(2002) 277. The results of the public consultation are available on http://europe.eu.int/comm/governance/index_en.htm
[17]   http://europe.eu.int/comm/civil_society/coneccs

considers that it could play a crucial role in defining and structuring civil dialogue and stresses the importance of increasing the amount of information made available to citizens on the essential features of the Union and of making greater use of instruments other than legislation. A protocol was signed by which the Commission and the Committee put on record that in the context of establishing new forms of governance, the Committee was ideally suited to become a privileged intermediary between the Union's institutions and organised civil society. The Protocol also contains express provision to the effect that the Commission should invite the Committee to issue "exploratory opinions" and that the Commission would rely on the Committee to deepen its relations with organised civil society.

3.1.4. *Fourth line of action: connecting with networks*

1. The White Paper recorded and analysed, at European and at international level, the growing social and political importance of networks understood as interaction between individuals and/or organisations (communities, regional and local authorities, undertakings, administrations, research centres and so on) in a non-hierarchical way and where every participant is responsible for a part of the resources needed to achieve the common objective, electronic communication being the most preferred tool. The Commission therefore envisaged developing a more systematic and proactive approach to working with key networks to enable them to contribute to decision-shaping and policy execution, and examining how the framework for transnational co-operation of regional or local actors could be better supported at EU level for the purpose of presenting proposals.

2. Economic actors are increasingly organised in networks and this has been recognised by the Commission. As a general rule, horizontal European federations are consulted on all matters and the professional organisations are consulted on sector-specific matters. The channels used by these organisations to link to their national and local bases are increasingly electronic communication channels that allow increasingly advanced interactive participation. This interactive communication is encouraged by the tools that the Commission itself has made available.

The Commission has set up *Interactive policy making (IPM)*,[18] to allow spontaneous information feedback on-line. The European Consumer Centre Network (ECC Network), which participates to the IPM initiative, is an important interface between the Commission and European consumers. Its role is to support the European consumer to make better use of the internal market and to provide the Commission with important on the spot information. Currently, the ECC network covers 14 European Consumer Centres in 12 Member States and will be further developed. The **Euro-info Centre** network that currently comprises 258 relay structures catering for SMEs up to local level (of which 50 are in the applicant countries) operates both in a vertical manner in both directions (Brussels - local level and back up) and in a horizontal manner between the partners concerned. The constant supply of information, in particular on actual case studies compared with the implementation of the legislation will help to implement or realign policies. Own-initiatives by the networks such as the annual Car-Free Day and the *Netdays* in schools have enjoyed increasing success.

3. The Commission has adopted a follow-up Action Plan to e-Europe 2002, entitled **E-Europe 2005**, which aims to stimulate secure services, applications and content based on a widely available and secure broadband infrastructure, while at the same time ensuring the inclusion of all citizens in the information society.

---

[18]   http://europa.eu.int/yourvoice/index_en.htm

4. In addition to providing financial contributions to Solvit and IPM, the Interchange of Data between Administrations (or **IDA programme**) has made available a public service, *Portal of the EU Administrations*, which is currently in a pilot phase. In order to foster the offer of online services with relevant cross-border dimension among European administrations, the portal is aimed at becoming a single access point for all available public online information and services to assist Europe's citizens and businesses to carry out cross-border activities.

3.2. Better policies, regulation and delivery

Substantive progress has been made on the White Paper commitments regarding *better policies, regulation and delivery*. The Commission has taken initiatives aimed at improvements throughout the policy-making cycle: policy conception, choice of instruments, regulatory implementation and enforcement. In taking these initiatives the Commission was encouraged and inspired by a substantial amount of preparatory work carried out by Member States and international organisations, as well as the generally positive response by stakeholders to the basic outline of the White Paper.

3.2.1. Better regulation

1. As announced in the White Paper, the Commission proposed in June 2002 a broad **Action Plan on simplifying and improving the regulatory environment**[19], with the overall goal of developing a new common legislative culture within the EU. The Action Plan on better regulation draws on ideas presented in the White Paper and develops initiatives, *inter alia*, on better policy preparation through improving the current procedures for consultation and impact assessment, enlarging the range of the various policy tools, limiting proposals to essential elements (providing greater scope for implementing measures to complete the technical details), and launching a programme on simplification of Community legislation.

This Action Plan includes action proposed to European Parliament and Council in their capacity of Community legislators, and action to ensure the effective transposition and application of legislation by the Member States. The Action Plan suggests *inter alia* closer legislative collaboration between the institutions, annual assessment of the quality of legislation and better public access to legislation under preparation or adopted by using EUR-Lex, a more appropriate use of legislative instruments, simplifying and reducing Community legislation, and ensuring the quality of legislation adopted. Vis-à-vis Member States, the Action Plan envisages e-transmission of national notifications, national consultations and impact assessments, and closer co-operation on transposition of Community law into national law. The Commission therefore called on the indispensable co-operation of *Parliament, Council and the Member States*. Subsequently, inter-institutional negotiations have been launched with a view to concluding an inter-institutional agreement on better regulation[20].

2. For its own part, the Commission has taken substantial steps to improve its own preparation of initiatives, in particular through the framework for consultation of the public (see above), guidelines for the use of expert advice and the framework for impact assessment of planned initiatives. The principles underlying these initiatives should become part and parcel of good administrative behaviour, including for other Community institutions and bodies as well as for Member States.

---

[19] COM(2002) 278
[20] The European Council in Seville invited the Institutions to conclude an interinsitutional agreement before the end of 2002.

3. In its Communication on the **collection and use of expertise**[21], the Commission sets out core principles and internal guidelines to Commission departments regarding collection and use of expert advise at all stages of Commission policy making. This initiative draws on existing best practices within and outside the Commission and offers a general framework to promote such best practice in all relevant areas. The proposed principles and guidelines have a two-fold objective:

–   to ensure that Commission departments mobilise and exploit the most appropriate expertise, with a view to establishing a sound knowledge base for better policies, and

–   to establish the Commission's core principles of quality, openness and effectiveness in this domain.

The Commission's guidelines concern the collection and use of expertise and know-how in a broad sense, not only scientific expertise. The guidelines will also apply to consultations taking place through Commission-established expert groups, but they are outside the formal decision-making procedures set in the Treaty or in secondary legislation. They will apply as of 2003 and be subject to on-going monitoring as well as an evaluation 3 years after taking effect. As flagged in the White Paper on European Governance, the Commission will examine the extent to which its own guidelines could form the basis for a common approach for all institutions and Member States in this area.

4. In its Communication on **impact assessment**[22], the Commission commits itself – starting in 2003 – to gradually carry out impact assessments for all major legislative and policy initiatives, covering regulatory impact assessment and sustainable development (in the economic, social and environmental fields). The impact assessment will make it easier to decide whether action should be taken at Community level, in the light of the Treaty and the Protocol on the application of the principles of subsidiarity and proportionality, and help improve quality and coherence of Community policies.

The Commission's approach on impact assessment marks a major effort towards a new regulatory culture, integrating all existing sectoral assessments concerning direct and indirect impacts of proposed measures into one single instrument. Detailed guidelines for Commission departments implementation of impact assessments are under development.

The Commission has proposed that the other institutions also undertake impact assessments of substantial amendments to Commission proposals. This issue is currently under consideration in the context of negotiations on an inter-institutional agreement on better regulation. Similarly, the Commission has invited Member States to undertake impact assessments in order to improve the quality of national transposing measures in particular for any supplementary provisions added to legislative acts and for measures notified to the Commission under Directive 98/34/EC[23].

One specific initiative meant to deliver inputs and feedback as to the impact of envisaged legislative and policy initiatives is the European Business Test Panel. With the use of interactive policy making (IPM) instruments and the aid of the Member States, the

---

[21]   COM (2002) 713
[22]   COM (2002) 276
[23]   Directive 98/34/EC lays down a procedure for the provision of information in the field of technical standards and regulations.

Commission is currently in the process of setting up a European Business Test Panel, comprising 4000 enterprises of all sizes and from all sectors.

5. The Action Plan on better regulation also raised the wider question of the **choice of appropriate instruments for Community action**, on which the Commission reserved its right to make additional proposals in the light of the progress of work in the Convention on the future of the Union[24].

The Commission pointed out that regulations and directives should be used in accordance with the spirit and letter of the EC Treaty: a regulation should only be used for action which must be applied uniformly across the Member States; a directive should respect the original definition of the directive as laid down in the Treaty and be an instrument establishing a legal framework and objectives which must be met.

The Commission intends to ensure, as far as possible, that directives are general in nature and cover the objectives, periods of validity and essential aspects of legislation. It will be for the legislator to decide what form these essential aspects should take, by making a policy decision, and to ensure that technicalities and details are a matter for executive measures. Limiting directives in this way with a view - among other things - to simplifying legislation should not undermine the legislative prerogatives of the European Parliament and the Council; on the contrary, it will enable them to concentrate on the fundamental aspects of legislation.

6. In the White Paper, and subsequently in its Action Plan on better regulation, the Commission proposes to make greater use of **alternatives to traditional legislation** without undermining the provisions of the Treaty or the prerogatives of the legislator. It also recalls that the EC Treaty already makes provisions for specific forms of co-regulation, referring to Articles 138 and 139 TEC, under which labour and management can conclude binding agreements at Community level.

There are several tools which, in specific circumstances, can be used to achieve the objectives of the Treaty while simplifying lawmaking activities and legislation itself (co-regulation, self-regulation, open co-ordination method).

Within the framework of a legislative act, *co-regulation* makes it possible to implement the objectives defined by the legislator through measures carried out by active and recognised parties in the field concerned. The Commission remains convinced that co-regulation is an option for focusing legislative work on essential elements and for simplifying and improving implementation - circumscribed by criteria laid down in a future inter-institutional agreement on better regulation. *Self-regulation* concerns a large number of practices, common rules, codes of conduct and voluntary agreements which economic operators, social players, NGOs and organised groups establish on a voluntary basis in order to regulate and organise their activities. Unlike co-regulation, self-regulation does not involve a legislative act. The Commission has proposed criteria and modalities for the use of these and similar alternative instruments to pursue the Treaty objectives, and these are currently the subject of negotiations on an inter-institutional agreement. Having proposed orientations for the role of the open method of co-ordination in the White Paper, the Commission, in its Annual Policy Strategy for 2003, anticipates carrying out a strategic evaluation of how the method works in the areas in which it has been initially implemented.

---

[24]   COM (2002) 275

7. The Commission has proposed that, with the support of the Council and European Parliament, a major effort be undertaken to **simplify the body of Community law and reduce its volume**. The Commission proposes that the institutions jointly define a *programme for simplifying* Community legislation. The Commission will identify the priority sectors in need of simplification and inform the legislator accordingly. The European Parliament and the Council, which as the legislator will ultimately have to adopt the proposals for simplified legislative acts, should adapt working methods to achieve more speedy and efficient procedures to simplify Community law. The Commission considers it essential that an interinstitutional agreement on better regulation should cover this aspect, and also integrate and underpin on-going work on the codification programme launched by the Commission in November 2001[25] as well as work on recasting[26].

3.2.2. *Better implementation*

1. Drawing on the White Paper's outline of *better regulation and delivery* and *refocused policies and institutions* as well as the Commission's initiatives on better involvement and better policies, the Commission has also adopted several key proposals to improve implementation of Community action.

2. Article 202 of the EC Treaty provides a key basis for the Commission's executive role. Its application, as governed by the relevant secondary legislation on the **procedures for the exercise of implementing powers** (so-called "comitology"[27]), is therefore of crucial importance in efforts to refocus the institutions and achieve the desired improvements in the legitimacy, efficiency and credibility of the Community.

The Commission argues in the White Paper that the objective of refocusing of institutions would justify the re-examination, if not the elimination of the present regulatory and management procedures. This should be combined with the rebalancing of the responsibilities of the institutions, confining to the Commission the principle responsibility of executing legislation and reinforcing the possibility for the two branches of the Community legislator (Parliament and Council) to control the Commission's exercise of its implementing powers, at least in areas subject to codecision (Article 251 of the EC Treaty).

In line with these orientations, and while retaining access to the indispensable expertise of Member State representatives, the Commission proposes to amend Council Decision 1999/468/EC[28]. In particular, it proposes to revise the existing *regulatory procedure,* for implementing measures under co-decision, by introducing two distinct phases. In the initial *executive phase*, the Commission will submit a draft measure to a committee of Member State representatives. If, by a deadline set by the Commission, the committee expresses opposition to the draft measure, an additional period will be allowed for the Commission to find a solution. The Commission's draft measure will thereafter be forwarded, in the second *control phase*, to the European Parliament and the Council. Either institution may, within a set deadline, express opposition to the Commission's draft implementing measure, in which case the Commission may either submit a legislative proposal or proceed to adopt the implementing measure, possibly amended in the light of the positions of Parliament and the Council. This procedure is complemented by an urgency procedure, allowing implementing

---

[25]   COM (2001) 645
[26]   Interinstitutional agreement of 28.11.2001 on a more structured use of the recasting technique for legal acts. Published in Official Journal C 77 of 28.03.2002 (p. 1-3)
[27]   Council Decision 1999/468/EC.
[28]   COM (2002) 719

measures to enter into force before the legislator's controls take place. This change to "comitology" procedures will be transitional in nature, pending a new system of delegation of implementing powers based on a revision of the treaties (see point 3.4.).

3. The White Paper held that regulatory agencies in clearly defined areas of competence could help improve the way rules are applied and enforced across the EC. Seeing a growing role for regulatory agencies, the White Paper proposed certain conditions for such agencies and announced that the Commission would table a detailed framework for the creation, operation and supervision of future regulatory agencies.

To this end, the Commission has presented a communication setting out a **framework for regulatory agencies**[29] to facilitate creation of such agencies while safeguarding the unity and integrity of the executive function at the EC level. The detailed framework foresees criteria for the creation of regulatory agencies (act of establishment, legal status, location), their functioning (scope of responsibilities, governing bodies, status of director, recourse possibilities, administrative and budgetary procedures), and the Community's control mechanisms over such agencies (administrative, political, financial and legal controls). The Commission has invited Parliament and Council to formalise a framework for the creation of regulatory agencies based on the principles set out in its communication.

4. The White Paper outlined the idea of target-based tripartite contracts as a way of offering greater flexibility with regard to legislative and implementation tasks and policies with a strong territorial impact. During the public consultation, many territorial entities (regions or municipalities) expressed their interest in participating in the conclusion of contracts as soon as their objectives, nature and scope were clarified by the Commission. This led to the communication from the Commission on **a framework for target-based tripartite contracts between the European Community, the Member States and territorial authorities**[30]. Making a distinction between target-based tripartite *contracts* (concluded in direct application of basic Community law) and target-based tripartite *agreements* (concluded outside the framework of European law between the European Community, represented by the Commission, a Member State and territorial authorities), this communication describes their aims and scope. As to implementing procedures, the communication proposes an *enabling clause* for a tripartite contract to be included in a proposal for a regulation, directive or decision, together with the essential elements of a *model* tripartite contract or agreement. The Commission, initially, envisages launching - as pilots - target-based tripartite *agreements*.[31] Only after evaluation of these pilot projects would the Commission consider proposing target-based tripartite *contracts*.

The Communication also reiterates that the governments of the Member States indicate the competent regional or local authority and that target-based tripartite contracts or agreements cannot distort the level playing field of the Single Market.

5. **Complaints and infringements**: The process of collecting input, started by the White Paper on European Governance, on the subject of the application of Community law was based on the desire to improve the quality of Community legislation and its enforcement.

---

[29]   COM (2002) 718
[30]   COM (2002) 568
[31]   The Commission will examine the possibility of financing such pilot target-based agreements on the basis of article 48§2 of the new financial regulation, which incorporates the contents of the interinstitutional agreement on budgetary discipline of May 1999.

The first aspect is covered by the Commission's Action Plan on better regulation. The second relates to enforcement essentially through infringement proceedings and actions on failure to fulfil obligations, and raises two principle questions:

–   To what extent does action to enforce Community law through infringement proceedings respond to requirements in terms of effectiveness (the result of good governance)?

–   How can this effectiveness be improved? Must the Commission step up its initiative? Can the exercising of the Commission's discretionary power to start proceedings be made more effective?

With regard to the Commission's priority setting when investigating suspected breaches of Community law, the Commission's communication[32] on its handling of possible infringements establishes a new, more efficient approach. It clarifies where formal infringement proceedings will be launched by the Commission, and where alternative approaches to breaches in Community law will be envisaged. The communication also provides for a considerable strengthening of the Commission's preventive approach and increasing administrative co-operation with the Member States, as well as a proposal to guarantee access to justice at the Member State level.

Acknowledging the vital role played by the complainant in detecting infringements of Community law, the Commission adopted a communication[33] on relations with the complainant in respect of infringements of Community law. In line with observations from the European Ombudsman, this guide codifies the different administrative stages in the Commission's examination of a complaint and makes provision for complainants to be informed of the outcome of the Commission's examination.

6. In the White Paper on European Governance, the Commission, drawing on the experience acquired with the applicant countries, announced that it would propose **twinning arrangements between national authorities** in order to encourage the sharing of best practices in implementing measures in particular sectors and promote awareness of Community law among national courts and lawyers. The Commission intends to propose twinning arrangements in 2003 with a view to modifying the "Twinning" programme[34] currently applied during a transitional period.

3.3.   Contribution of the EU to global governance

1. The White Paper stressed that *successful governance reform at home* was needed in order for the EU to make a credible case for *change at global level*; change to which it should be no less committed.

2. The Commission's action in the international field is guided by compliance with the rights and principles contained in the *EU Charter of Fundamental Rights* proclaimed at the Nice Summit in December 2000. The Charter makes the overriding importance and relevance of fundamental rights more visible to EU citizens and will also promote coherence between the EU's internal and external approaches. The Commission, in 2002, has adopted

---

[32]   COM (2002) 725
[33]   COM (2002) 141
[34]   Managed with the support of the PHARE fund.

communications on a global partnership for sustainable development,[35] on responses to the challenges of globalisation[36] and on corporate social responsibility[37]. At its most visible, the EU is **promoting at international level the governance principles** it adheres to at home. The EU has worked towards a more inclusive globalisation agenda, seeking to ensure that market liberalisation takes place in a broader regulatory framework (WTO - Doha meeting, November 2001). It has contributed to the World Conference against Racism (Durban, August-September 2001), worked towards increasing official development assistance and stressed the need to broaden and strengthen the participation of developing countries and countries with economies in transition in international economic decision-making and norm-setting (International Conference on Financing for Development, Monterrey, March 2002) and, took stock of and reaffirmed its commitment to the implementation of the internal and external dimensions of global sustainable development through a multi-dimensional approach. In this context eradicating poverty and changing unsustainable patters of production and consumption are overarching objectives (UN World Summit on Sustainable Development – Johannesburg, August-September 2002).

The EU has also acted to ensure that no genocide, war crimes or other crimes against humanity can ever again go unpunished by welcoming the entry into force (July 2002) of the Rome Statute[38], providing for the creation of the International Criminal Court (ICC). The EU[39] confirmed its support for the early establishment and effective functioning of the ICC, as well as its determination to encourage the widest possible international support for it. The latter concern led the EU to propose the development of a broader dialogue between the European Union and the United States on the matter. It also led the EU to develop, as one of its guiding principles for Member States considering the necessity and scope of possible arrangements with the United States, to address the desirability of the US re-engaging in the ICC process.

3. Less *visibly*, the Commission is developing its **dialogue with governmental and non-governmental actors of third countries** on the use of new tools at the global level as a complement to "hard" international law, and on promoting discussion on how the EU can contribute to a comprehensive reform of multilateral institutions. In this way it is progressively laying the foundations for future advances in mechanisms and co-operation on global governance. The issue of whether and under which conditions third-country governmental and non-governmental actors should be involved in the development of EU policy proposals was addressed at an international seminar organised by the Commission.[40] Orientations from the discussions with *third-country actors* as to the extent to which participation by third-country governments, industry and civil society in EU deliberative processes is legitimate or desirable confirmed the view set out in White Paper on Governance. The overriding argument in favour of engaging the views of third-country actors during the EU's deliberative process is that this could help produce better decisions and lend greater force and credibility to EU action. At the same time, both EU and third-country actors accept a boundary between the deliberative and decision-making processes. This balance has for example recently been reflected in a document finalised between Commission departments and the United States Trade Representative. The Guidelines for Regulatory Co-operation and

---

[35]   COM(2002) 82
[36]   COM(2002) 81
[37]   COM(2002) 347
[38]   Adopted 17.07.1998 – UN Diplomatic Conference of Plenipotentiaries on the establishment of an International Criminal Court (139 signatories).
[39]   General Affairs and External Relations Council, 30.09.2002.
[40]   "Trade, Governance and Sustainable Development", Brussels, 24-25 June 2002

Transparency provide political support for voluntary cooperation between regulators on both sides of the Atlantic[41].

4. Against a background of discussions on regulatory alternatives within EU policy-making, the Commission[42] has also examined the **scope of "soft law" approaches at international level**. Initial results are causing the Commission to assess the global environment and policy domains as less secure and less transparent than the EU environment, and in greater need of "hard law" providing the necessary security and transparency. The Commission nevertheless considers that "soft law" instruments could be examined as an innovative complement to hard law, not as a substitute. This is notably the case with corporate social responsibility, a concept which could be further developed as a potential successful business option.

5. On the question of how the Union can contribute to a comprehensive **reform of multilateral institutions** and improve co-operation, the Commission is developing a more comprehensive and strategic approach for both the Commission and the EU in its relations with the United Nations system and the Bretton Woods Institutions. The Commission is seeking to consolidate and reinforce systematic EU co-ordination across the UN system. It proposes progressively reinforcing EU representation in the Bretton Woods Institutions and supporting policy coherence between the UN, the WTO and the Bretton Woods Institutions. The EU can clearly play a role in promoting co-operation between institutions on the basis of new models geared to responding to a rapidly changing world. But its role should not be limited to process building. The EU also seeks to redress inadequate participation of developing countries, which often raises the question of the legitimacy of international organisations. On the above issues, the Commission is examining the creation of a non-bureaucratic policy discussion space in order to encourage a freer exchange of views outside a formal 'negotiating mindset'.

6. To exercise the responsibilities of a world power and contribute to global governance, the **EU will need to speak more often with a single voice**. With regard to reviewing (under present treaties) the EU's international representation, the Commission presented an initial stance to the Convention[43] which proposed closer co-operation between the High Representative and the Commission, the building up of the political role of the Commission's external delegations, as well as joint participation in some of the work of the Commission and Council. The Commission has also put forward co-ordinated participation in European Parliament debates, or even the presentation of joint initiatives and documents. In its second submission to the Convention, the Commission[44] proposed initial institutional change through the creation of the post of *Secretary of the European Union*, as a Vice President of the Commission with a special status. The Secretary of the Union, to be appointed by common accord of the European Council and the President designate of the Commission, would represent the European Union vis-à-vis third parties with regard to foreign policy and would be responsible for implementing common decisions.

3.4. Refocused policies and institutions

1. In the White Paper, which was based on the hypothesis of a unchanged Treaty, the Commission proposed using its right of initiative to concentrate more on the coherence of

---

[41]   The Guidelines on Regulatory Co-operation and Transparency were settled under the Transatlantic Economic Partnership (TEP), an EU-US trade initiative.
[42]   "Trade, Government and Sustainable Development" ibidem
[43]   COM (2002) 247
[44]   COM(2002) 728

policies and the definition of long-term objectives, building on the current mechanisms for strategic planning and programming. The Commission also announced proposals for the coming Intergovernmental Conference aimed at refocusing the Commission's executive role while streamlining and facilitating control by the legislator over the way it exercises its implementing powers.

2. In its proposal for a framework for the creation of **regulatory agencies** at Community level, the Commission has aimed to enhance implementation and enforcement of Community rules, while emphasising the safeguarding of the **unity and integrity of the executive function** at EC level. The Commission's proposal firmly establishes its own responsibility for the exercise of the executive function and sets out the modalities for creation, functioning and control of regulatory agencies in line with their public mission and operational autonomy.

Within the scope of the present Treaty, the Commission's proposal to review **comitology** procedures by more clearly **separating the executive and control functions** seeks to **rebalance and strengthen monitoring** of the Commission's executive function **by both branches of the Community legislator** (Parliament and Council).

Similar objectives are also underlying the Commission's second contribution to the Convention[45] which proposes Treaty changes to allow for a clearer distinction between the legislative and executive roles of the Institutions and that confines to the Commission the principle responsibility for the execution of laws under the political control of the legislator.

3. The Commission has adopted and implemented a new cycle of **strategic planning and programming**, already envisaged in its White Paper on *Reforming the Commission*[46]. At the beginning of the year the Commission adopts the Annual Policy Strategy (APS) setting out its policy priorities for the following year and specifying the most important initiatives which will contribute to achieving them. It is then possible to draw up budgetary guidelines for the year in question. Intended for discussion with the European Parliament and Council, the strategy is used to prepare the preliminary draft budget and the legislative and work programme of the Commission and other institutions for the year.

With an aim of better structuring and co-ordinating the political priorities and bringing them to the attention of the public, the Annual Policy Strategy for 2003[47] exemplifies the implementation of this new cycle in line with the philosophy of the White Paper on Governance. The General Affairs Council has welcomed the priorities laid down by the Commission and the opportunity provided by the APS to continue the dialogue on strategic planning and programming. While such consultations must remain without prejudice to the Commission's right of initiative, Council has called on the Commission to take account of the Member States' comments, especially in drawing up its legislative and work programme. For the first time the Commission has produced a *mid-term assessment* of its APS, in the light of the structured dialogue successfully engaged in with the European Parliament and the Council[48]. The 2003 legislative and work programme was adopted by the Commission in October 2002.

---

[45]   COM(2002) 728
[46]   COM (2000) 200
[47]   SEC (2002) 217
[48]   COM (2002) 427, Communication "Stocktaking of the follow-up to the Annual Policy Strategy for 2003".

4. In the White Paper, the Commission called on the *Council* to improve co-ordination between its different formations and to strengthen its political steer and coherence between EU measures and *Member States'* measures. It also invited the *European Council* to focus on strategic objectives, and the *European and national parliaments* to play a stimulating role in the public debate on the future of European and Community policies. The European Council meeting in Seville adopted measures on the **structure and operation of the Council**, reinforcing the handling of institutional and horizontal matters and follow-up of European Councils. The number of Council formations has been reduced and co-ordination between them is thus strengthened, as is the Council's scope for political involvement. The Seville European Council also decided that the **European Council should have more strategic agendas**. On the basis of a joint proposal from the Presidencies concerned, prepared in consultation with the Commission, and on the recommendation of the General Affairs Council, the European Council will adopt a **multi-annual strategic programme** for the next three years. The first strategic programme will be adopted in December 2003. At the same time, in its second submission to the Convention, the Commission proposed that the future constitutional Treaty should create a formal decision-making body for the Member States which are part of the euro zone which would function as the "Economic and Financial eurozone Council".

4. CONCLUSION

With the July 2001 White Paper on European Governance, the Commission wanted to launch a broad debate and inspire action in pursuit of the fundamental objectives and principles underlying good governance in Europe.

European governance is about the principles and tools for decision-making within the context of the multiple layers of players and decision-makers in Europe – from the European Community, through the Member States, to regional and local authorities and private parties. The coexistence and intertwining of several governance levels clearly constitute unprecedented challenges.

The Commission is convinced of the importance of improving European governance and takes the view that the basic objectives and approaches of the White Paper are supported, in particular the need for:

– improving bottom-up involvement in EU policy shaping and implementation,

– widening the choice of regulatory instruments to respond to governance challenges,

– more focused European institutions with clearer responsibilities.

This report outlines the progress over the last 16 months. It shows that the Commission has already developed and launched the majority of the actions proposed in the White Paper. Some key issues raised in the public consultation, e.g. democratic legitimacy of EU institutions, will be addressed further in the Convention.

However, the potential for European governance will not be fully realised until the magnitude of the challenges is recognised. In particular:

– The White Paper stressed that European governance must be a joint effort by all players. The Commission thus refers to its earlier calls for action from the other institutions and bodies, as well as the Member States and other public and private players. Since the White Paper was presented, the Commission has reiterated this call for more concrete actions, in particular in the context of its initiatives for "better regulation" where the aim is to reach an interinstitutional agreement.

– The European governance agenda cannot be limited to the Commission's White Paper. The White Paper was no more than a contribution, and was specific to the time and circumstances when it was presented. The Commission is convinced of the pertinence of the issues raised and of the basic outline proposed in the White Paper. This needs to be taken forward in continued governance work and in the context of the ongoing preparation of Treaty changes.

In 2003 and beyond, the Commission intends to pursue the agenda set out in the White Paper in the light of the results of the public consultation. The Commission also intends to reach agreement on initiatives already launched and to provide further governance inputs as part of the reform of the treaties.

ANNEX I - THE PUBLIC CONSULTATION

The public consultation on the Governance White Paper ran over an eight-month period, from 25 July 2001 to 31 March 2002. As a result of the consultation process, 260 written contributions were received.[49]

The modest number of contributions may to some extent be linked to the fact that the "policy process" (steering tools and decision-making mechanisms) is only one side of the governance coin – the other side being EU policy itself. A number of contributors questioned in this respect the abstraction made in the White Paper, having expected the White Paper also to address such important EC/EU policy domains as external policy, enlargement, or economic and monetary union (EMU).

The White Paper's governance concept as such drew reactions in more or less equal measure from public/political authorities (27%), organised civil society (22%) and socio-economic players (22%). There was also a substantial response from the academic world (16%), while contributions from individuals accounted for 13%. *Charts 1-2 illustrate the response by source in absolute numbers and percentages.* The response from public/political authorities consisted almost exclusively of contributions from local and regional authorities.[50]

The geographical spread of the response was more uneven. Apart from transnational responses (29%), replies from the UK (23%) were predominant. Replies from other Member States account for anything between 0% and 11%, while the response from non-Member States accounts for 8%. *Charts 3-4 illustrate the response by Member State in absolute numbers and percentages.*

The institutional response was mixed. The governments of Denmark, Finland, France, Germany, the Netherlands, Sweden and the United Kingdom submitted written positions, while the European Parliament, the Economic and Social Committee and the Committee of the Regions forwarded opinions. The Council and eight Member State governments did not submit positions.

The White Paper's proposals on 'better involvement' drew 44% of the comments, while proposals on 'better policies, regulation and delivery' accounted for 32%. 19% of comments addressed the issue of 'refocusing EU policies and institutions' and 5% were on the issue of 'the EU's contribution to global governance'.[51] *Charts 5-6 illustrate comments with regard to the different White Paper themes in absolute numbers and percentages.*

---

[49]   Contributions are accessible on the European Commission's governance website: http://europa.eu.int/comm/governance/index_en.htm. Further reactions and exchanges of views on governance-related issues were also received via the Inter-active Policy Making (IPM) tool and the "Your Voice" site, as well as the interactive open debate on the future of Europe on the "Futurum" site.

[50]   For the purpose of the present report, the *civil society category* comprises citizens' associations: NGOs, consumer organisations, environmental groups, cultural groups, voluntary associations, churches, etc., while the *socio-economic category* comprises the social partners ("management' and 'labour'), professional organisations, public and private enterprises, and chambers of commerce. The *public/political category* comprises public entities: predominantly regions, municipalities, and also associations of regions and municipalities as well as Member States, while the *academic category* comprises both university contributions as well as individual academic contributions.

[51]   Most of the 260 contributions received contained comments on more than one of the proposed actions. The sum of all comments on all proposed actions has been used to calculate the relative response to the different White Paper themes.

Observations concentrated on consulting civil society (48% of comments were on 'better involvement'), on reaching out to regional and local government (26% of comments were on 'better involvement'), and on better regulation (49% of comments were on 'better regulation, policies and delivery'). Some issues drew a cross-constituency response, others triggered a predominantly constituency response. For example, the response on consulting civil society brought a cross-constituency response, while observations on reaching out to regional and local government came almost exclusively from public/political authorities, i.e. Member States and regional and local authorities. *Chart 7 gives the breakdown of comments by source.*

Key messages from the public consultation

The main messages from the public consultation have been analysed in terms of *'content'* rather than *'source'*.[52]

–   The public response largely supports the White Paper's definition of the **principles underlying EU governance,** i.e. *openness, participation, accountability, effectiveness and coherence,* as constituting principles of good governance. A number of contributors have proposed additional principles, such as democratic legitimacy and subsidiarity.

–   Some contributors **commend** the White Paper on **addressing the issue of low citizen participation** and involvement within the EU, considering however that the causes of the difficulties are insufficiently addressed and the solutions proposed inadequate.

–   Concern that the White Paper's analysis and approach reflect a vision defined by the **Commission's institutional self-interest** and the role of the executive.

–   Some respondents perceived the **scope of the governance agenda proposed in the White Paper** as being limited, focusing predominantly on the effectiveness and efficiency of the decision-making system. The White Paper's perceived 'short cut' of equating the governance debate with the democratic deficit debate sparked off a significant strand of contributions on democratic legitimacy in relation to the Institutions and some of the White Paper's approach.

–   Support for **(re)focusing on core functions** and a task-oriented Commission.

–   **Willingness to engage in consultation and participation** in EU policy shaping accompanied by a clear demand from organised civil society and from regional and local players for concrete Commission action.

Via openness to wider participation in EU policy shaping

–   **Information, a prior requirement**: Many contributors have argued that prior to better involvement of citizens, there is a need for more and better information on and from the EU Institutions. The access to documents regulation (EC 2001/1049) is generally welcomed, but access to documents does not, in itself, constitute sufficient

---

[52]   Full details of the results of the public consultation, including a more detailed analysis of the correlation between respondent and subject matter addressed and the orientations proposed, are accessible on http://europa.eu.int/comm/governance/ index_en.htm, the European Commission's governance website.

information on the EU decision-making process. A major effort to inform citizens is needed and would help to combat alienation and improve participation.

–   **Clarity about the nature of 'better involvement'**: Ensuring more openness, better involvement and participation is widely endorsed. It is seen a means of reinforcing accountability and therefore giving strength and vitality to the EU institutions. It is distinguished from increased democratic legitimacy of the EU and its institutions.

–   **Consultation and involvement of civil society should not undercut representative systems**: For large sections of the respondents, it is clearly understood and to be stressed that consultation and involvement of civil society should not undercut representative systems.

–   **Civil society - issues of representativeness and responsibility**: A cross-constituency majority is apprehensive as to better involvement being pre-conditioned and linked with greater responsibility and accountability for civil society actors. There is marked opposition against possible requirements on the internal structures of civil society organisations. Civil society actors consider that representativeness should be ensured by the Commission by taking into account the full range of views.

–   **Need to recognise the multi-level nature of European civil society**: The Commission should not concentrate on transnational structures *only*. Contributions have in this respect stressed the danger of dynamic erosion of domestic legitimating and participatory structures in favour of new transnational constituencies.

–   **Reaching out to sub-national public authorities: constitutional constraints versus a willingness to engage**: The proposals for better involvement of the regional and local levels in both policy shaping (*dialogue with regional and local authorities*) and policy implementation (*target-based tripartite contracts*) have mainly drawn constituency comments which demonstrate interest but generally call for clarification of the Commission's ideas. The response shows a split between the critical or sceptical reception by national governments (the Treaty only regulates the relationship between national authorities and the European institutions — involving sub-national authorities in EU decision-making is therefore seen as an intrusion in the internal organisation of Member States) and the European Parliament, on the one hand, and the positive interest from a majority of regions and localities on the other hand. A number of contributions call for a *direct* permanent and structured dialogue with the EU rather than through European and national associations.

–   **Demand for "vertical subsidiarity" from regional and local players**: An important strand of the response from regional and local authorities has put forward the concept of "vertical subsidiarity". While such vertical subsidiarity would necessarily have to be enshrined in a new Treaty, there is also concern that a "special treaty status" for constitutional regions would only lead to further inequality between regions.

–   **An enhanced status for the Committee of Regions versus reform**: Constituency comments on the possible role of the Committee of the Regions have been divergent. Some contributors have argued for an enhanced status for the Committee of the Regions while others have advanced the need for a complete institutional overhaul in order for the Committee to better represent "regions" and be more pro-active.

Towards better EU policy and lawmaking

– **Better policies and regulation: institutional primacy-efficiency trade-off**: A broadening of the range of EU policy instruments and increased use of non-legislative instruments have been widely endorsed by the response. However, the response also shows the need to reconcile two concerns. On the one hand, there is the view that alternative regulatory models and non-legislative instruments have often proved to be more efficient and effective than traditional legislation. On the other hand, there is the opinion that improved efficiency cannot justify a transfer of decision-making competence to interested parties who would not be democratically accountable.

– **Better preparation of regulation**: The commitment to publish guidelines on the Commission's use of expertise has drawn a welcoming response. Contributors have argued the need for sound scientific underpinning of policy proposals and have stressed the importance of independent and identifiable advice. Contributors have also accepted that ex-ante impact assessment will contribute to the balance and quality of decision making.

– As regards the **choice of policy instrument**, opinion is divided. While one strand of opinion – for reasons of clarity – opts for fixed rules on policy areas and their related instruments, others opt – for reasons of flexibility – for the choice of policy instrument to be decided on a case-by-case basis.

– **Alternative regulatory instruments (co-regulation, self-regulation, open method of co-ordination)**: A large part of the public response, in particular from socio-economic players, is in favour of assessing all policy instruments, including new alternatives, on an equal footing. Institutional players (the European Parliament in particular) are more reticent and consider that further examination is required.

– **Comitology: questions as to possible reform**: Academic and institutional respondents have voiced opposition to the Commission's suggestion to abolish regulatory and management committees procedures and retain only advisory procedures. Respondents consider that the White Paper offers no alternative to the Council's control over the Commission's executive competence. It is thought that a shift in EU implementing competence will result in reduced democratic legitimacy of decisions taken. Contributors have also argued that abolishing regulatory and management committees would amount to the replacement of consensus-seeking procedures by unchecked powers for the Commission. It has also been argued that comitology reform goes beyond the governance framework, requiring a Treaty change (Article 202 of the EC Treaty).

– **Regulatory agencies: reservations on dispersed decision-making**: A majority strand in the White Paper response has expressed reservations about the creation of regulatory agencies at EC level. Some contributors have pointed to the fact that the Treaty confers powers of administration on the EC in only a few areas in which Community administration is seen as the only effective means of implementation. It is argued that the case for regulatory agencies at EC level remains to be made. Other contributors have raised the issues of transparency and democratic control. Some have questioned the added value of 'additional' intervening layers and point to the risk of even less comprehensible decision-taking in the eyes of citizens.

– **The respect of Community law: enlargement the main challenge**: The Commission's commitment to codifying the complaints procedure is welcomed, but some contributors have voiced concern at the anticipated decentralisation in the handling of infringement procedures. The problems of a lack of awareness of EC law among the legal profession in the Member States and the danger of conflicting judgements undermining the uniform application of EC law are stressed. The response has indicated that, in the case of transposition and infringement policy, the major challenge seems to be the forthcoming enlargement.

On democratic, efficient institutions and European policy goals

– **The Community method**: The White Paper's adherence to the Community method is broadly supported. The proposed focusing of the legislative role of the European Parliament and the Council on essential principles, while leaving technical detail and implementation to the Commission, has drawn a substantial response, but also questions. It is suggested that the envisaged enlarged role for the Commission would cover many policy choices below the level of "essential principles" which, nevertheless, may remain highly political.

– **Warning against confrontational strategies**: Contributors have questioned the White Paper's idea that "*the Council should vote as soon as a qualified majority seems possible, rather than pursuing discussions in the search for unanimity*". Likewise, contributors have pointed to risks to the Community method by the Commission's increased use of its prerogative to withdraw proposals "undermined" by inter-institutional bargaining.

– **Refocusing policies and institutions: goals and competencies to be clear**: An important strand of opinion considers that EU goals and competencies need to be spelt out in a basic binding text specifying the distribution of responsibilities between the decision-making bodies of the EU on the one hand, and between the Member States and sub-national regions on the other. There is support for the Commission's call for the refocusing of the role of Community institutions and the approaches proposed for the Commission itself to concentrate on core functions as caretaker of the common interest within the Community method. In this context, respondents have also argued that institutional solutions rather than the White Paper's functional solutions are needed.

– **EU governance: democratic legitimacy of the EU institutions**: There is broad recognition that the principles of good governance should not be equated to democratic government, as better governance cannot be the answer to a democratic deficit problem. Part of the public response argues that the key issue is democratic legitimacy, which presupposes decisions arrived at through representative deliberation. It is generally recognised that the White Paper's call for inclusion of more players in the policy process, *while necessary*, does not by itself lead to increase democratic legitimacy of policies or institutions. In this respect, it is accepted that governance mechanisms seeking to enhance the effectiveness and efficiency of the decision-making system and ensure better involvement of more players will make the institutions more open, leading to increased responsiveness and accountability of institutions.

– **Global governance**: As to improving the effectiveness and legitimacy of global governance and regulation, contributors have welcomed the Commission's role in

some *initial* reform within the *World Trade Organisation*, while considering that much remains to be done. Non-EU contributors have notably argued for the governance principles applied by the Commission within the EU also to be applied towards non-EU governments and interested parties.

CHARTS

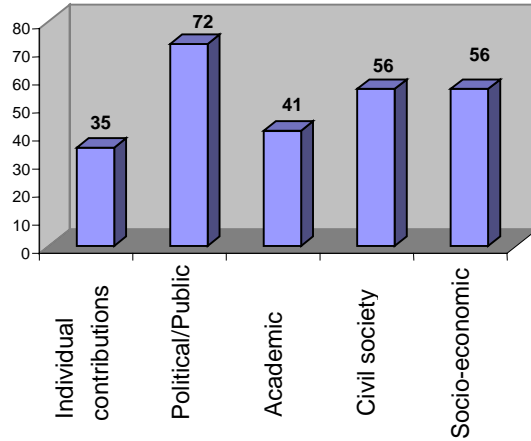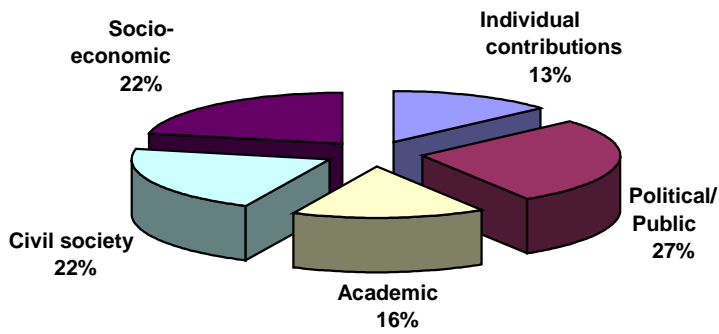**Chart 1: Contributions to the White Paper — breakdown by source (total)**

Chart 2: Contributions to the White Paper — breakdown by source (%)

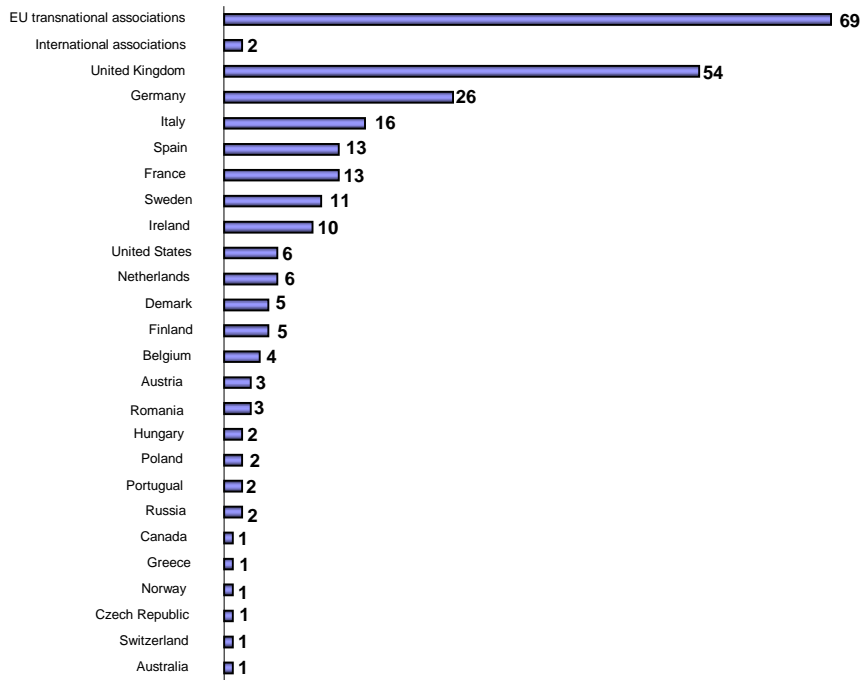**Chart 3: Contributions to the White Paper**
Breakdown by country

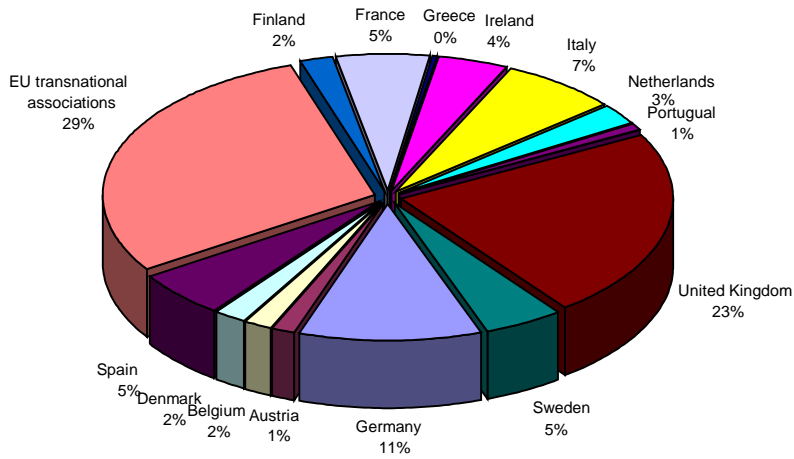| Country	Value
EU transnational associations	69
International associations	2
United Kingdom	54
Germany	26
Italy	16
Spain	13
France	13
Sweden	11
Ireland	10
United States	6
Netherlands	6
Demark	5
Finland	5
Belgium	4
Austria	3
Romania	3
Hungary	2
Poland	2
Portugal	2
Russia	2
Canada	1
Greece	1
Norway	1
Czech Republic	1
Switzerland	1
Australia	1

Chart 4: Contributions to the White Paper — breakdown by Member State (%)

Member State	%
Finland	2%
France	5%
Greece	0%
Ireland	4%
Italy	7%
Netherlands	3%
Portugal	1%
United Kingdom	23%
Sweden	5%
Germany	11%
Austria	1%
Belgium	2%
Denmark	2%
Spain	5%
EU transnational associations	29%

Chart 5: Contributions to the White Paper
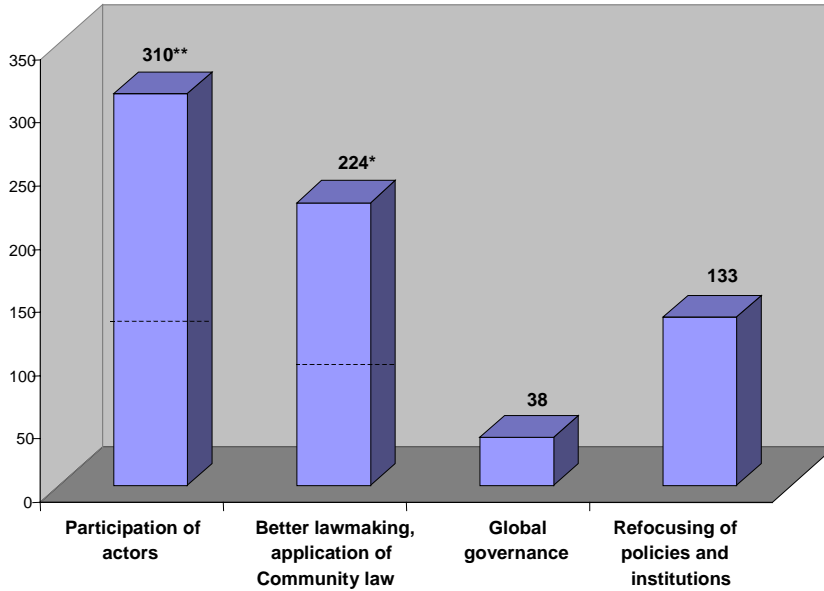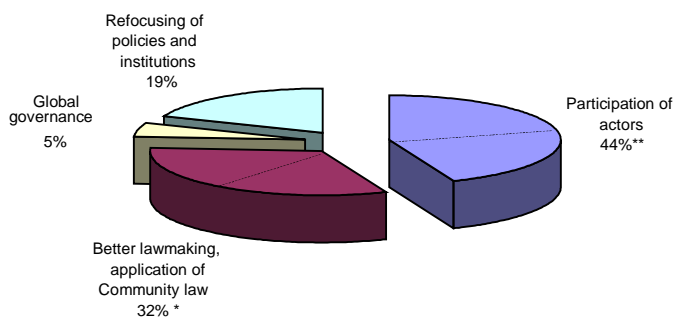**Breakdown of comments by theme (total)**

Chart 6: Contributions to the White Paper — breakdown by theme (%)

* half of which refer to the "better regulation" aspect

** half of which refer to the "consultation aspect"

Chart 7: Contributions to the White Paper - detailed breakdown by source of comments on the subjects addressed in the White Paper (total of 705 comments)							
	Individual contributions	Political contributions	Academic contributions	Socio-economic contributions	Civil society contributions	Total	
Better involvement						**310**	**100%**
Consultation	13	38	21	38	38	148	48%
Dialogue (local actors)	4	57	6	7	6	80	26%
Target-based contracts	2	31	3	4	1	41	
Networks	0	7	1	7	1	16	
Partnership agreements	0	10	3	6	6	25	
Better policies, regulation and delivery						**224**	**100%**
Better regulation	4	40	17	30	19	110	49%
Impact analysis	0	5	1	10	4	20	
Expertise	1	9	4	11	10	35	
Agencies	5	12	5	9	5	36	
Twinning	0	5	1	2	0	8	
Infringement of Community law/complaints	1	1	2	3	8	15	
Global governance						**38**	
Dialogue (third-country actors)/new instruments	3	11	2	14	8	38	
Refocusing of policies and institutions						**133**	
Refocusing of policies	4	11	9	8	12	44	
Refocusing of institutions	9	23	17	11	11	71	
Comitology	2	7	4	2	3	18	

ANNEX II - USEFUL WEBSITES

CONSULTATIONS, THE EUROPEAN COMMISSION AND CIVIL SOCIETY (CONECCS):
http://europe.eu.int/comm/civil_society/coneccs/index_en.htm

DIALOGUE WITH CITIZENS,CITIZEN SIGNPOST SERVICE:
http://europa.eu.int/citizensrights/signpost/front_end/signpost_en.htm

DIALOGUE WITH BUSINESS:
http://europa.eu.int/business/

EUROPE DIRECT:
http://europa.eu.int/europedirect/en/index_en.html

INTER-ACTIVE POLICY MAKING (IPM):
http://ipmmarkt.homestead.com/

SG GOVERNANCE:
http://europa.eu.int/comm/governance/index_en.htm

SOLVIT (effective problem solving in the internal market):
http://europa.eu.int/comm/internal_market/solvit/index_en.htm

THE FUTURE OF EUROPE - DEBATE:
http://europa.eu.int/futurum,

THE EUROPEAN CONVENTION:
http://european-convention.eu.int

YOUR VOICE IN EUROPE:
http://europa.eu.int/yourvoice